

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TERRANCE T. HATCHER,

Plaintiff(s),

v.

BRIAN MILDEBRANDT, et al.,

Defendant(s).

Case No. 2:13-CR-1378 JCM (CWH)

ORDER

Presently before the court is a motion for summary judgment filed by defendants Juan Solis, Richard Sterett, and Stacey Strickland (hereinafter “defendants”). (Doc. # 45). To date, *pro se* plaintiff Terrance Hatcher (hereinafter “plaintiff”) has not responded. However, defendants filed a notice of receipt of response from plaintiff, stating that plaintiff provided an unfiled response in the form of a single page letter. (Doc. # 48). In his letter, plaintiff claims that he could not respond to defendants’ motion because he did not receive a copy of it. (Doc. # 48-1). Defendants noted that in response to plaintiff’s letter, they provided plaintiff with a copy of the motion at his listed address out of “an abundance of caution.” (Doc. # 48).

Federal Rule of Civil Procedure 5(a)(1)(D) states: “Unless these rules provide otherwise, each of the following papers must be served on every party . . . a written motion, except one that may be heard *ex parte* . . .” Fed. R. Civ. P. 5(a)(1)(D). District of Nevada Rule 5-1(a) provides that “[a]ll papers required or permitted to be served shall have attached . . . a written proof of service.” D. Nev. R. 5-1(a). Further, District of Nevada Rule 5-1(c) states that “[f]ailure to make the proof of service required by this rule does not affect the validity of the service. Unless material prejudice would result, the court may at any time allow the proof of service to be amended or supplied.” D. Nev. R. 5-1(c).

1 Defendants' motion for summary judgment was filed on the docket without a certificate
2 of service. (Doc. # 45). Therefore, pursuant to the standard above, the court will deny the
3 motion without prejudice. The court will allow defendants leave to refile the motion with proof
4 of service.

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion for
7 summary judgment, (doc. # 45), be, and the same hereby is, DENIED without prejudice.

8 DATED August 26, 2014.

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10 UNITED STATES DISTRICT JUDGE